Reaſons & Propoſalls

FOR A

REGISTRY

OR

REMEMBRANCER

OF ALL

Deeds and Incumbrances of Real Eſtates, to be had in every County, moſt neceſſary and advantageous, as well for Sellers and Borrowers, as Purchaſers and Lenders.

To the Advance of Credit, and the General Good, without Prejudice to any Honeſt minded Perſon.

Moſt humbly offered to Conſideration.

By *Nicholas Phillpott* of *New-Inne*.

O X F O R D,
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UMI

Reaſons and Propoſalls for a Regiſtry or Remembrance Office, of all Conveance's, Grants, and other Incumbrances whatſoever, which Bind, Attach, or affect Reall Eſtates, to be had and kept in each County.

IT is moſt apparant that fraud and deceipt encreaſes continually; For remedy whereof there have been many wholeſome Lawes made which are no ſooner publiſhed then evaded by ſome new contrived Artifice.

Until 27 *Eliz:* no proviſion was made againſt fraudulent Conveyances, and then (that miſchief being grown high) was a moſt excellent Law enacted to remedy it (without which none durſt purchace (and conſequently none could ſell) lands in theſe daies as it is evident by the great number of Caſes Controverted therein.

Yet (notwithſtanding the well penning of that Statute and the learned expoſitions upou it) this Lawe is not at all times able to ſuppreſſe or avoide a fraud, ſubtlely contrived (as by payment of money or giveing ſecurity in publick and then repaying or reſtoreing it in private or the like) But if a publick Regiſtry or remembrance of all Conveyances and Incumbrances on real eſtates were ſetled in each County all miſchiefs and inconveniences

whatsoever by precedent Grants and Incumbrances, would be prevented to Purchacers and Creditors (unless it were by their own wilfull neglect (and if so) they are deceived by themselves and none else.

The usefulnesse and benefit to all his Majesties subjects, of what is proposed, appears, and is demonstrable in nothing more then the vast number of Suits, & Actions in the Courts at Westminster, arising meerely by reason of precedent and concealed Incumbrances, which have and daily do wast and Consume the whole substance of such as are concerned in them; And two parts in three (at least) of all suits touching reall estates, depending in Westminster Hall, are sprung from this mischief.

To instance particular examples of persons deceiving, and deceived in this kind, is not necessary (it being so Epidemicall and obvious, nor can be mentioned without scandall to such as are guilty therein; yet (to satisfie Curiosity) I could vouch and justify within the Circuit of the small County wherein I live to the value of above 40000*l*. at least of them at this time in being, and I presume there are very few who are acquainted with dealings in the world, that cannot demonstrate too many sad instances of the like kind in their own respective Countries.

The terror of this mischief, affrights persons who have money to lend unto those who want it, and occasions the demanding of too unreasonable securities, which enforces men to engage their friends, as well as their lands, to satisfy scrupulous lenders, and hath so far weakened Credit, as that a lender in these daies, will rather set at five

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per Cent to a City Goldſmith, or Scrivener, upon a note of his hand, then at ſix to a Country Gentleman on his Morgage, Judgement, or Statute, (and with a prudent foreſight to) For in the one caſe (if his ſecurity proves defective) he ſpends perhaps all he hath to endeavour the recovery of it, and (in the other) being out of hopes, he is freed from further trouble or Charge, and ſits down by his firſt loſſe.

As the diſcovery of precedent Incumbrances would be to the great benefit, ſafety, and ſatisfaction of purchacers and lenders. So would it prove no leſſe advantageous to borrowers and ſellers, by giving them Credit to raiſe mony on ſale, or engagement of their lands, as occaſion requires, without drawing in (and thereby often ruining) their friends to be engaged with them, or giveing generall ſecurities by Judgements, Statutes, and Recognizances, which Attach their whole eſtates, and make them uncapable of ſelling or diſpoſeing any part of it upon what emergent occaſions ſoever, this as to the ſober and Circumſpect debtors.

Then as for the young Gallants, who knows no more of attaining to eſtates, then the derivation of their deſcent, and at ſixteen years old hop to the Univerſity, then at nineteen fly to London, where by one and twenty their uncurdled braines evaporateing into froth and ayre, they like young Jack dawes) are enfranchized into the ſociety of the Old Rooks of the City, who having diſcovered their warm Neſts in the Country, ſoon lead them into the ſnares, and limetwigs of Judgement and Statutes. The principall means of their delivery and preſervation will

will be a timely discovery of their first engagement (which the thing proposed will effect) for when once the Incumbrance they create is discovered by the entry of it in their owne Country (without which no Considerable summe will be raised) then the Parent (if liveing) is fairely forewarned to check the sons prodigality, if otherwise, the unthrift will be enforced to discharge his old engagement before his new will be taken, and the very apprehension of discovery will cause many to forbeare those follies, which (though subject unto) they abhor to have known.

When an Estate is once involved in unfathomed Incumbrances, then it creates suits upon suits, the expence whereof soone devours all without either satisfying the Creditors or leaving any thing to remaine for the debtor.

It is very observable how the state and Condition of the seller alters the rate and quickneſse of sale.

If a person reputed to be indebted or engaged, offers land to sell, none will adventure to deale for feare of precedent Incumbrances (unles it be upon very great advantages of an vnder value (in regard of the danger) when as a man void of that prejudice may soone sell at the uttermost value.

There are persons who drive a trade in broakage of money whose course is this, Upon the application of a borrower he finds out the money, proposes the security, and names himself for one. This double kindneſse obtaines a bountiful reward out of the summe, and likewise undoubted Counter-security (not only against this engagement) but also all others in future (for my broaker intends not

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to desert his freshman so) Then for his generall Indempnity) he takes a lusty previous Judgment of his friend (as more concealeble then a statute) and upon the Credit of it, makes new supplies from time to time as occasion requires. when the old debt is called in (as it must be once a yeare) he engages of new (taking up so much more money as will supply the present occasions of the borrower and reward the broaking surety.) If the principall and his Coengaged Country suerties (these things being reciprocall betwixt them) proves slack or defective whereby the broaking bondsman is hardly set upon, he resolves to submit to the Law, and takes up his quarters in the Fleet or Marshall seas, and then to extend his Judgment to gaine some part of recompence for being undone by his kindnesse to his friend, whose estate is farr short to recompence his damage (although he was never worth a groat more then what he got by these means.) my application is, that if these Judgments came to be entered, persons of subsequent Concernment would come to the discovery of them, and thereby avoid or be timely releived against them.

The difficulty to borrow money proceeds not from it's scarcity, but the diffidence of good security, for it's generally known that those who need it not, and have estates, may borrow what they please on easie tearms, when as persons in debt cannot procure it without much trouble and Charge.

If monyed men could safely deale in purchases or morgages of lands (the obstruction whereof is only concealed, and undiscoverable Incumbrances) they would not keep

keep their treasure lying by them without profit to themselves, or use to the publick, but set it abroad to benefit, and none who are owners of land could want mony at any time to serve their occasions. This would promote Trade and Commerce betwixt all men.

The too frequent and abominable villany of forging, razing, altering, and antedateing of Conveyances, would be wholly prevented by the means of this Registry.

It will very much assist Executors to discover their Testators debts of record, whereby to know how to make due Administration with safety to themselves.

Objections may be made (which though weak in themselves) yet some may think them fit to receive an answer. As

1. The matter proposed would discover mens Estates to their prejudice, their debts would be made known, and so their credit and reputation weakened, and others who desire to conceal their fortuns, would be discovered to the world, and thereby lyable to taxes and burthensome offices, which now they avoid.

Answer. As to the first, the support of credit and repute, by having poverty undiscovered, is like the concealing of a wound till it comes to an uncurable Ulcer: and the effects of it can never recover the patient, but will at last destroy him, and deceive all who trust in him.

As for the other, it's most just and equitable that they should bear and undergo taxes and burthens proportionable to their estates, and not lay it on the shoulders of those who are of lesse ability.

2. *Obj.* It would give opportunities to pick holes, and find

find out defects in mens Conveyances.

Answer. 1. Many persons (having once gotten a possession) hold by wrong, on pretence of Conveyances which they have not, (occasioning many suits for discovery thereof) which need not be if the publick Registry did demonstrate it.

2. The Registring may be brief and short, setting forth only the effect of the Conveyance. Besides, scarce any in these daies do sell or grant land without keeping an exact coppy or Counterpart, by which defects (in case there be any) will more appear then it can do by the Registry.

3. *Ob.* It would put Purchacers to an unnecessary trouble and Charge.

Answer. The Charge will be inconsiderable to the great satisfaction they receive, by being freed from the danger of precedent titles; And the trouble cannot be much when an office for the purpose is kept in the Shire-town or Chief City of the County.

There is yet another objection which (though perhaps it will not be openly owned) yet may covertly prove more obstructive then all the rest, and that is, the growing students of the Law (who observe with admiration the vast wealth and honour acquired by their predecessors in their functions) may se cause of dispairing the like to themselves if this preventive remedy be set on foot; But the genuine and Candid exposition of the Laws use and Intention, forbids all Contradiction of what tends to the publick tranquility and welfare, and therefore I hope there needs not much to be said in Confutation of what will not be publickly asserted. And this I dare averr, that many learned

Lawyers have been deceived in their purchaſes by precedent titles of the very mony which they got in controverting the like caſes for their Clients.

Having thus far diſcourſed of the great benefit (and indeed) abſolute neceſſity of what is propoſed, I ſhall add my Conjectures of an order, manner, and likewiſe the Charge in execution of the buſineſſe in hand.

1. That the Regiſtry be kept in the Shire-town or chief City of each County, and all Incounties of Cities and towns (ſaving ſome great Cities particularly to be mentioned) be included within the out County it being not worth the attendance for ſome Incounties alone.

2. That the entry of each Deed, Grant, Fine, Common Recovery, Will, and Conveyances be in larg books of royal paper bound, (which are more dureable then parchment) and to contain only the date, parties names, Conſideration, lands granted, to whom, for what tearm or Eſtate, what uſes, upon what Conditions or limitations, and the endorſemen or ſubſciption of witneſſes (omitting all other Covenants) and this to be done briefly and concisely (only the lands granted to be full and at large, for expedition ſake) the purchaſer may bring an abſtract with him (which being Compared, and examined by the Regiſter, and the deed ſigned by him) the entry may be made by the abſtract.

3. If the Deed contain lands in ſeverall Counties, then an entry to be made in each County as to ſo much as lies within the ſame.

4. As for Judgments, Statutes, and Recognizances to be briefly entered with their dates, number, rolls, and Courts, where recorded in ſuch and ſo many Counties, as the Cognizors

find out defects in mens Conveyances.

Answer. 1. Many persons (having once gotten a possession) hold by wrong, on pretence of Conveyances which they have not, (occasioning many suits for discovery thereof) which need not be if the publick Registry did demonstrate it.

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Answer. The Charge will be inconsiderable to the great satisfaction they receive, by being freed from the danger of precedent titles; And the trouble cannot be much when an office for the purpose is kept in the Shire-town or Chief City of the County.

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Lawyers have been deceived in their purchases by precedent titles of the very mony which they got in controverting the like cases for their Clients.

Having thus far discoursed of the great benefit (and indeed) absolute necessity of what is proposed, I shall add my Conjectures of an order, manner, and likewise the Charge in execution of the businesse in hand.

1. That the Registry be kept in the Shire-town or chief City of each County, and all Incounties of Cities and towns (saving some great Cities particularly to be mentioned) be included within the out County it being not worth the attendance for some Incounties alone.

2. That the entry of each Deed, Grant, Fine, Common Recovery, Will, and Conveyances be in larg books of royal paper bound, (which are more dureable then parchment) and to contain only the date, parties names, Consideration, lands granted, to whom, for what tearm or Estate, what uses, upon what Conditions or limitations, and the endorsemen or subsciption of witnesses (omitting all other Covenants) and this to be done briefly and concisely (only the lands granted to be full and at large, for expedition sake) the purchaser may bring an abstract with him (which being Compared, and examined by the Register, and the deed signed by him) the entry may be made by the abstract.

3. If the Deed contain lands in severall Counties, then an entry to be made in each County as to so much as lies within the same.

4. As for Judgments, Statutes, and Recognizances to be briefly entered with their dates, number, rolls, and Courts, where recorded in such, and so many Counties, as the Cognizors

nizors lands do lye in, and in case of subsequent purchases, then where, when, and as often as such purchases shall be made for the discovery whereof the Creditor or Purchacer is to take care at his perill.

5. As for Coppyhold estates they are alwaies Conveyed openly in the Lords Court by way of surrender, and therefore need no other discovery, but in case of Leases made, or tearms granted by Deed of Copppie hold Estates, by the Lords licence, or otherwise) those to be Registred.

6. This Registring not to be used as binding evidence of the making or execution of any Deed, (in regard it is done at the instance of the grant, in the grantors absence) but only to serve for a discovery of it to such as shall be concerned.

7. To the end the present generation may reap some benefit of this work, that all Deeds, Assurances, and real Incumbrances, made or created since the year 1660, be registered within a year at the peril of the grantees or cognizees being postponed.

8. That all other Registries be made within four months after the date (and then to be effectuall as from the date) at the perill of being postponed to all intervening before it is registered, but not to be forecluded of registring at any time (runing the hazard of postponing) And if any will so far relie upon his security, and his Grantor or Cognizors integrity, without registering) it to stand good against all but Creditors and Purchacers.

9. That an exact Alphabet be kept of all the Grantors, and Cognizors names, with their titles and additions, and the number or folio wherein their Art is Registred. And in

regard ſome perſons are called by ſeveral ſurnames (with alteration of title and addition) that (for better aſſurance) another Alphabet be kept of the names of the towns and places wherein the lands granted do lye, (for both theſe Alphabets together muſt be infallible.)

10. As for fees of the Office, Every entry not exceeding 3 ſheets, each ſheet Containing 12 lines, and 8 words in every line, two ſhillings, and for every ſheet exceeding, ſix pence.

For the Alphabetting of each entry ſix pence.

For a ſearch and ſight of the entry for every ten years, five ſhillings, and if for any leſſe number of years, eight pence for each year.

For coppies for every ſheet written as aforeſaid, ſix pence.

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